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New guidelines will help cities, towns review Chapter 40B development proposals

DEVENS, Ma., Nov. 4, 2005 --- In an effort to help cities and towns review housing development proposals submitted under the law commonly known as Chapter 40B, the Massachusetts Housing Partnership (MHP) today released new guidelines to help zoning boards of appeal review applications for comprehensive permits.

"Up until now, there's been no formal guidance available to cities and towns on some of the most difficult issues that confront local zoning boards of appeal when they're reviewing comprehensive permits filed under Chapter 40B," said Clark Ziegler, executive director of MHP and a co-author of the guidelines. "These guidelines will help ZBAs achieve better results for their communities."

The guidelines were released at a Chapter 40B informational forum for town officials and affordable housing developers at the Devens Common Center. The state holds these forums several times a year in an effort to bring municipal officials and housing developers up to date on the latest development practices and requirements. The forum was sponsored by the state Department of Housing and Community Development, the Citizens' Housing and Planning Association and MHP.

The guidelines were written by MHP and Attorney Edith M. Netter, who specializes in land use planning, environmental matters, affordable housing, real estate development and Chapter 40B. An outside advisory group of town officials and state officials, developers and consultants provided guidance and feedback throughout the drafting of the guidelines. The guidelines have been endorsed by all four state agencies involved in Chapter 40B – DHCD, MHP, MassHousing and MassDevelopment.

"While Chapter 40B has been one of the single greatest contributors to the supply of affordable housing in Massachusetts, it is also a complex process that poses a challenge to city and town officials who are trying to balance local concerns about their community with the responsibilities of trying to provide affordable housing," said Jane Wallis Gumble, Director of DHCD. "These guidelines are part of the state's continuing efforts to make sure we facilitate housing development that works for both the communities and the people who need housing."

In addition to providing step-by-step guidance to help ZBAs analyze Chapter 40B applications and achieve better results for their communities, the guidelines establish several new practices and standards:

- State housing agencies will now appraise and establish the land value of 40B sites before issuing project eligibility letters.
- Puts standards in place for determining when permit conditions make a 40B development "uneconomic".
- Sets guidelines on determining related-party transactions, i.e. when a developer may also have a role as contractor, or realtor.

The guidelines also provide advice to ZBAs. Some of the major points are:

- Identify the most important issues early and communicate them to the developer.
- Informal work sessions are often highly effective.
- When negotiations are unsuccessful, ZBAs can rely on these guidelines to make decisions that are unlikely to be overturned in court.

Ziegler said the intent of the guidelines is to provide an accepted framework for discussion for both towns and developers.

“While these guidelines were written from a local perspective, developers should also use them as a guide to preparing and seeking approval for permits,” said Ziegler. “For example, in those communities that have an affordable plan, it would be wise for developers to submit projects that comply with the plan. The bottom line is that we hope that these guidelines will give communities and developers a roadmap that will help them from the start to finish of their discussions.”

For more information about Chapter 40B and to obtain a copy of the guidelines online, go to www.mhp.net/40B.